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Letter dated 28 June 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Mexico submitted pursuant to paragraph 6 of resolution 1373 (2001) as well as the response of Mexico to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 22 June 2006 from the Permanent Representative of Mexico to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I have the honour to refer to the reports presented by Mexico for the consideration of the Committee. In that connection, I am pleased to transmit to you the fifth report of Mexico, in response to your note of 3 March 2006 and in fulfilment of the requirements of Security Council resolutions 1373 (2001) and 1624 (2005) (see enclosure).

(*Signed*) Enrique **Berruga Filloy**
Permanent Representative of Mexico to the United Nations

Enclosure

Fifth report of Mexico to the Counter-Terrorism Committee established pursuant to United Nations Security Council resolution 1373 (2001), submitted in response to the request by the Chairman of the Committee in her note of 3 March 2006 (S/AC.40/2006/OC.62)

1. Implementation measures

Legislation

1.1 The Committee is aware of the efforts Mexico is making in order to bring its national criminal legislation into conformity with its international commitments in the area of terrorism (fourth report, p. 8). The Committee would be pleased to receive a progress report on the initiative to reform Mexico's criminal law, the obstacles that this reform faces and the estimated time frame for its approval.

Mexico's progress in bringing national criminal legislation into conformity with its international commitments in the area of terrorism is as follows: on 25 October 2005, draft legislation was submitted for the consideration and endorsement of the Senate Chamber of the Congress of the Union, and was approved and transmitted to the Chamber of Deputies on 1 December 2005. It consisted of a draft Decree covering various provisions of the Federal Penal Code; the Federal Code of Criminal Procedure; the Federal Organized Crime Act; the Credit Institutions Act; the Act on Savings and Loan Associations; the Act on the Retirement Savings System; the Federal Act on Guarantee Institutions; the General Act on Mutual Insurance Institutions and Companies and the General Act on Credit Organizations and Related Activities. No obstacles to the proposed reform have so far emerged; it is impossible to estimate how long approval will take as the legislative process is not subject to a specific deadline.

The draft Decree is currently awaiting the views of the combined Justice and Human Rights and Finance and Public Credit Committees of the Chamber of Deputies.

Protection of the financial system

1.2 The Committee takes note of the structures and functions of Mexico's Financial Intelligence Unit (FIU) and would like to know whether the FIU is adequately funded, staffed and provided with sufficient technical and other resources to fully perform its authorized functions. How many suspicious transaction reports (STRs) have been received by the FIU since its establishment? How many investigations and prosecutions have been initiated as a result of these reports, and what was the outcome thereof?

Since its restructuring in May 2004, the Ministry of Finance and Public Credit's Financial Intelligence Unit (FIU) has had the requisite human, technical and financial resources to fulfil its functions. Its structure includes a Unit head and three deputy directorates fulfilling specialized duties for preventing money-laundering and the financing of terrorism, including the following:

- **Financial analysis 1 and 2**: establish intelligence reports based on the information in FIU databases;
- **Legal action**: transmits accusations and forwards intelligence reports to the competent authorities;
- **Regulatory activities and national and international relations**: involved in updating the legal framework and in liaison between FIU and national and foreign authorities;
- **Economic and statistical analysis**: establishes macroeconomic studies to detect trends in and methods of money-laundering and financing of terrorism; conducts FIU statistical monitoring.

FIU has a staff of 47 specialists structured as follows:

Financial analysts	22
Legal action analysts	7
Regulatory analysts	5
Strategy analysts	6
Administrative support staff	7

Staff are trained with the help of international bodies, including the World Bank and the United States Department of the Treasury, which provide technical assistance. They are subject to a rigorous recruitment procedure including background checks, interviews and technical and aptitude tests in order to guarantee ethical and technical suitability.

Furthermore, the FIU facilities have recently been completely renovated in order to provide a secure physical location and a work environment which suits the needs of the Unit, which has also been equipped with the latest computer systems including a secure internal communication network and software specifically designed to analyse financial transactions.

Between May 2004 and December 2005, FIU received a total of 93,576 unusual transaction reports. Following an analysis of those reports, 1,198 proactive intelligence reports were produced and transmitted to the competent authorities.

1.3 Pursuant to paragraph 1 (a) of resolution 1373 (2001), Member States should impose legal obligations on financial institutions, lawyers, real estate brokers, accountants and notaries and other professional intermediaries engaged in brokering activities, requiring them to report suspicious transactions to the relevant authorities. Mexico has stated in its reports that administrative rules covering this sector will be issued (third report, p. 5). What steps has Mexico taken in that regard?

An initiative to reform various articles of the Income Tax Act, published in the *Official Gazette* on 23 December 2005, made it compulsory to report cash transactions exceeding 100,000 pesos (approximately US$ 10,000) relating to certain non-financial activities and professions. In that connection, taxpayers engaged in activities such as auctions, trade in precious metals and stones, dealing in art or real estate, pawnbroking or operating non-profit organizations, together with notaries, accountants, customs agents, lawyers and *corredores publicos*

(mercantile brokers), must report such transactions to FIU via the Tax Administration Service (SAT). Through this provision, the activities and professions listed are made subject to arrangements to prevent money-laundering and the financing of terrorism.

Provisions recently issued by the Mexican authorities include the new Securities Market Act, published in the *Official Gazette* on 30 December 2005 by the Ministry of Finance and Public Credit. It will be applicable in Mexico as from 28 June 2006 to all those involved in the securities market.

It is important to point out that the new Securities Market Act will be supplemented by general provisions which are due to be issued shortly by the appropriate regulatory bodies. In addition, article 113 of the new Act identifies securities intermediaries as stock brokerages; credit institutions; operators of investment companies and administrators of retirement funds; and distributors of shares in investment companies and financial bodies entitled to act as such distributors.

The new Securities Market Act contains provisions on the activities and procedures to which stock brokerages must adhere, while other securities intermediaries must comply with the legislation and provisions of the Mexican financial system.

The new Act imposes duties and responsibilities on those who prepare financial information, on supervisory bodies and on external auditors of bodies involved in the securities market; such activities are mainly carried out by public accounting professionals.

1.4 How does Mexico monitor unregistered funds transfer agencies, such as those operating under the Hawala system? How many such agencies are believed to exist? How do the Mexican authorities intend to ensure that these entities are not used for terrorist purposes? What measures are being taken to close down such illegal or unregistered operations?

We are not aware of any Hawala-like systems operating in Mexico. However, by virtue of an amendment to article 95 bis of the General Act on Credit Organizations and Related Activities, published in the *Official Gazette* on 28 January 2004, currency-exchange centres and money transmitters have been brought into the arrangements to prevent money-laundering and the financing of terrorism.

Accordingly, 1,297 currency-exchange centres and 448 money transmitters have been registered. The individuals and entities engaged in the activities concerned are supervised by the Tax Administration Service (SAT), and have the following obligations:

- To notify SAT when they begin operating;
- To submit transaction reports (relevant, unusual and suspicious transactions);
- To establish "know-your-customer" and customer-identification policies;
- To implement monitoring systems;
- To put in place internal control structures or bodies (depending on the structure and size of the entity bound by the obligations).

In addition, a notice has been placed on the SAT web page to warn currency-exchange centres and money transmitters to report as unusual any transactions involving the individuals and entities connected with terrorist acts identified in the consolidated lists issued by the United Nations Security Council.

The consolidated lists are available for consultation on the same web page by the entities bound by the obligations. When the lists are updated, the entities bound by the obligations are informed of the addition of new individuals or entities connected with terrorism, so that they may report transactions where appropriate.

Criminalization and criminal procedure

1.5 The Committee wishes to draw attention to the need to bring terrorists to justice while preserving defendants' rights to due process of law. In its fourth report (p. 9), Mexico mentions that through the above-mentioned legal reform, "the offences of terrorism and related acts would be included in the category of serious offences, making it impossible for bail to be granted". What are the checks and balances for such arrests under Mexican law and what is the procedure for judicial review?

In accordance with the Constitution of the United Mexican States and the international agreements in this field to which Mexico is a party, checks and balances are attached to detention in order to ensure that each such instance is the result of a written warrant from the competent authority, setting out the legal foundation and motivation for the proceedings.

The reform would provide only that an individual suspected of a terrorist crime could be denied bail because of the seriousness of the offence and the attendant danger to society. It in no way means that the accused is deprived of the guarantees and rights protecting him at the time of detention or of due process from the beginning of the investigation and during trial.

With regard to judicial review, the Constitution of the United Mexican States provides that detention which fails to comply with the guarantees of due process provided through amparo proceedings pursuant to articles 103 and 107 may be challenged.

Moreover, strict application of the criminal law by the Public Prosecutor's Office is directly monitored by its immediate hierarchical superior, the Federal Prosecutor, and, where appropriate, by the internal supervisory body. Failure to apply the criminal law strictly would result in the Public Prosecutor's Office being held criminally and/or administratively accountable. The same would apply in the case of failure to respect the rights of the accused and the rules of due process.

With regard to judicial review of proceedings, the federal judiciary has assistance from the Federal Judiciary Council, the internal supervisory body overseeing the actions of federal judges, in respect of applying appropriate penalties or bringing cases before the Federal Public Prosecutor's Office, where justified.

1.6 In the third report (p. 7), Mexico states that terrorism is a crime punishable under the Federal Organized Crime Act and that Mexican law allows the seizure and confiscation of the assets of members of organized criminal groups. The Committee would be grateful if Mexico could outline its principal legal procedures for the confiscation of assets and similar deprivation mechanisms, and explain the terrorist activities which do, and do not, fall within the definition of "organized crime" under the Act and how the legal reform initiative mentioned in the fourth report (p. 8) deals with the freezing, seizure and confiscation of assets intended to finance acts of terrorism. Under current law, can Mexico's authorities freeze funds or assets of legal origin pertaining to terrorist activities?

Once the Public Prosecutor's Office has sufficient evidence to determine that an individual is involved in acts of terrorism and to identify assets belonging to that individual or organization, it must establish — based on the evidence obtained — whether the assets in question are instruments, objects or products of unlawful activity.

Once the nature of the assets has been determined in accordance with the procedural legislation in force, provisional seizure, with a view to confiscation, is decreed.

Once the investigations are considered completed, the Public Prosecutor's Office turns over to the federal courts the likely perpetrator and the seized assets.

At the end of the trial, the judge may rule that the assets turned over to the federal courts by the Public Prosecutor's Office should be confiscated by the State.

Under similar arrangements for preventive action to deprive the accused of access to assets, Mexican criminal procedure allows a preventive attachment of assets for the purpose of reparation for damage caused.

In addition, article 2, section I, of the Federal Organized Crime Act treats terrorism as a form of organized crime, as provided for in article 139, paragraph 1, of the Federal Penal Code, which states: "Any person who, by the use of explosives, toxic substances or firearms or by arson, flooding or any other violent means, perpetrates acts against persons, property or public services which result in alarm, fear or terror among the population or among a group or a sector of the population, for the purpose of disturbing the peace, attempting to undermine State authority or bringing pressure to bear on the authorities to take a particular decision, shall be liable to a penalty of 2 to 40 years' imprisonment and a fine of up to 50,000 pesos, without prejudice to the penalties laid down for the resulting offences."

If such acts are committed by three or more persons who conspire to organize or who organize in order to engage, repeatedly or on an ongoing basis, in conduct which, in itself or together with other conduct, has as its purpose or result the commission of the offence in question, that fact alone may provide grounds to punish the persons concerned as participants in organized crime.

One of the effects of the draft Decree to reform various provisions, which is moving through the legislative process, would be to add to article 139 a paragraph indicating that the same penalty shall apply to any person who, directly or indirectly, finances, supplies or collects funds or economic resources of any type, in the

knowledge that they will be used, in whole or in part, to support persons or organizations operating or committing acts of terrorism in the national territory.

It also proposes a Title II, on crimes contravening international law, and a Title III, on international terrorism, containing an article 148 bis, which imposes a prison term of 15 to 40 years and a fine of 400 to 1,200 days' income, without prejudice to the penalties laid down for the resulting offences on:

(I) Any person who, by the use of toxic substances, chemical, biological or similar agents or radioactive materials or instruments that emit radiation, explosives or firearms or by arson, flooding or any other means, perpetrates in Mexican territory acts against persons or property of a foreign State or any international body or organization which result in alarm, fear or terror among the population or among a group or a sector of the population, for the purpose of disturbing the peace, attempting to undermine the authority of that foreign State or bringing pressure to bear on that State or on an international body or organization to take, or not to take, particular action;

(II) Any person who, directly or indirectly, finances, supplies or collects funds or economic resources of any type, in the knowledge that they will be used, in whole or in part, to commit acts of international terrorism or to support terrorist persons or organizations operating abroad;

(III) Any person in Mexican territory who plans or prepares a terrorist act committed, or intended to be committed, abroad.

Although the components of the draft reform described above do not refer to the handling or intended use of assets which could be subject to seizure, such assets will be treated legally as indicated at the beginning of this section.

The current legal provisions allowing seizure of funds or assets are based on the fact that such funds or assets are the product, instrument or object of unlawful activity.

Mexican legislation uses the following accepted legal concepts:

- Seizure of assets liable to confiscation in cases where they are the object, instrument or product of a crime. The aim of such a precautionary measure is forfeiture to the State, as provided for in article 40 of the Federal Penal Code;
- Seizure of the proceeds of a crime with a view to reparation for damage caused to assets, or restitution, as provided for in article 40 of the Federal Penal Code;
- Preservation of the assets connected with unlawful activity, not with a view to keeping them from their owner, but rather with a view to maintaining them in a state that protects them from damage, disappearance or destruction if it is believed that they might be useful to the investigation provided for in article 181 of the Federal Code of Criminal Procedure;
- Seizure and preservation, at the preliminary inquiry stage, of instruments, objects and products of a crime and assets obtained by criminal means;
- Confiscation at the final verdict stage.

Another legal concept — a provisional attachment of assets — is aimed primarily at providing reparation for damage caused or to ensure fulfilment of other

obligations on the offender provided for in articles 489, 490 et seq. of the Federal Code of Criminal Procedure, in conjunction with article 432 et seq. of the Federal Code of Civil Procedure, by way of supplementary application.

1.7 With regard to the freezing and seizure of funds, the Committee would like to know under what circumstances Mexico's criminal law permits the confiscation of terrorist funds without prior identification, prosecution or conviction of any individual terrorist. Can funds be frozen at the request of another State? What is the standard of proof needed to establish a link between the funds and the terrorist group or activity in question?

Pursuant to article 22 of the Constitution, confiscation of assets is banned, and the penalties and security measures established in article 24 of the Federal Penal Code only provide for confiscation of the instruments, products or objects of crime; article 14 of the Constitution in turn contains a legal guarantee which prevents confiscation unless a terrorist has first been identified and tried or sentenced.

Article 16 of the Mexican Constitution provides that any act of the authorities must be duly substantiated and justified, meaning that, when the applicable legislative provisions and the reasoning to support the specific legal hypothesis are put forward, the citizen must be equipped to defend his rights. Consequently, the seizure of bank accounts held by likely terrorists must be supported by legal arguments and statements.

There are mechanisms for freezing funds, at the request of another country, on the basis of existing bilateral and multilateral agreements. Mexican criminal law will accept as evidence of the link between the funds and a terrorist group or activity any proof of the connection between the funds, the unlawful activity and the perpetrator of that activity, and their connection with the organization, provided that it is relevant and does not contravene the law.

Of special relevance in that connection is article 29 of the Federal Organized Crime Act, which allows seizure where sufficient evidence exists to suggest validly that a person is a member of organized crime. In the light of the fact that the crime of terrorism is prosecuted in accordance with the rules of the Federal Organized Crime Act, it should be understood that the paragraph in question applies.

Article 22 of the Constitution states: "The judicial authorities shall rule that assets seized with a view to an investigation or trial for organized crime offences should be forfeited to the State once that investigation or trial is complete, without making a final decision on the assets concerned"; accordingly, there is no need in this case for a verdict before the likely perpetrator of a terrorist crime can be deprived of the assets seized, if the offence was committed in the context of organized crime.

In order to settle the matter of this constitutional exception, the Federal Executive presented an initiative to reform and add to the Federal Code of Criminal Procedure; the initiative was approved by the Senate on 4 October 2005, and the Senate bill is currently awaiting the views of the combined Justice and Human Rights and Finance and Public Credit Committees of the Chamber of Deputies.

The relevant articles of the bill read as follows:

"Article 577 — The forfeiture to the State of seized assets, referred to in this Chapter, shall be ruled on through a proceeding before the judicial authorities in which it is shown that the *corpus delicti* points to organized crime. The proceeding shall take place at the instigation of the Public Prosecutor's Office.

Article 578 — The following judicial authorities shall be involved in the proceeding described above:

I. If the proceeding is begun with a view to a ruling bringing the preliminary investigation to an end, the duty district judge for criminal matters;

II. If the proceeding is begun with a view to a ruling bringing the criminal trial to an end, the judge who presided over the trial.

Article 579 — The proceeding described in article 577 shall take the following form:

I. The Federal Public Prosecutor's Office must make the application for assets to be forfeited to the State within 10 days of the final rulings bringing the investigation or trial to an end, or before the statute of limitations for the category of assets concerned enters into force, provided that the competent authorities have issued no decision on the assets, in accordance with article 22 of the Constitution of the United Mexican States;

II. The application of the Public Prosecutor's Office:

i. Must contain the information necessary to show that the *corpus delicti* points to organized crime;

ii. Must, if required, describe in detail the assets which it is proposed to assign to the State, their location and the name and address of the apparent owner or holder of the assets or the person acting in that capacity;

iii. Must provide the particulars of the suspect or defendant in the investigation or trial in question;

iv. Must specify why the investigation or trial has been brought to an end;

III. The decision by which the judge accepts or rejects the application of the Public Prosecutor's Office may be appealed. Any appeal shall have the effect of suspending the proceeding;

IV. The judge must notify the owner or holder of the assets, or the person acting in that capacity, of the proceeding initiated by the Public Prosecutor's Office;

V. If the identity or address of the owner or holder of the assets to which the proceeding relates, or of the person acting in that capacity, is not known, notification shall take place by a notice containing a summary of the application and identifying the assets which are the target of the proceeding. The notice shall be ordered

to be published three times in the *Official Gazette* and in one of the most widely circulated Mexican newspapers;

VI. In the notification, the judge shall indicate the date for a hearing, which must take place within 30 days of the date on which the notification takes effect. At the hearing, the interested party may put forward any desired arguments and present the necessary proof that the assets are of legitimate origin;

VII. Within 70 days of the hearing referred to in the previous paragraph, the judge shall rule on the application of the Public Prosecutor's Office;

VIII. An appeal may be made against the ruling referred to in the previous paragraph, in accordance with the terms of this Code;

IX. The assets shall not be released from seizure either during the conduct of the proceeding or during appeal."

1.8 The Committee would appreciate it if Mexico could share any assessments or evaluations carried out by international or regional bodies in connection with implementation of resolution 1373 (2001), including those related to operational measures.

The measures which Mexico has put in place to combat the financing of terrorism conform to the standards and principles established by the following international and regional forums and bodies:

- The Financial Action Task Force (FATF);
- The Egmont Group of financial intelligence units;
- The Asia-Pacific Economic Cooperation Forum (APEC);
- The Inter-American Committee Against Terrorism (CICTE) of the Organization of American States.

Mexico has been a full member of the Financial Action Task Force (FATF) since June 2000. The Task Force has adopted an action plan to combat the financing of terrorism which is in accordance with the International Convention for the Suppression of the Financing of Terrorism and with United Nations Security Council resolution 1373 (2001).

This action plan includes special recommendations to criminalize the financing of terrorism and terrorist acts and organizations; establishment of measures to freeze the funds and other assets of terrorists and of those who finance terrorism and terrorist organizations; submission by financial institutions and other bodies subject to anti-money-laundering obligations of suspicious transaction reports; maximum international cooperation in investigations and proceedings connected with the financing of terrorism, terrorist acts and terrorist organizations; and measures to ensure that natural and legal persons providing money- or value-transfer services are authorized, registered or subject to the FATF anti-money-laundering recommendations applying to banks and non-bank financial institutions.

It should be borne in mind that Mexico played an active part in designing and adopting these recommendations because it believed that — in the light of

international trends — such measures would provide effective cooperation to prevent and punish terrorist acts and terrorist criminal organizations.

Mexico has been the subject of two Mutual Evaluation Reports assessing compliance with measures to counter money-laundering and the financing of terrorism.

The issue of combating terrorism has been discussed since the terrorist attacks on the United States of America on 11 September 2001 in the Asia-Pacific Economic Cooperation Forum (APEC), including the Counter-Terrorism Task Force (CTTF). From that time, the Government of Mexico has been involved in debate on the matter at expert level in CTTF and, at summit level, in the meetings of APEC ministers and leaders.

Mexico has participated in the 10 meetings which CTTF has held since its establishment, making substantive contributions to initiatives in this field put forward for the consideration of APEC leaders. It has also insisted, in the light of the growing profile of the security and counter-terrorism agenda within APEC, that those initiatives must be consistent with the efforts of specialized agencies including the International Atomic Energy Agency (IAEA), the International Civil Aviation Organization (ICAO) and the Food and Agriculture Organization of the United Nations (FAO), and must avoid duplicating the matters which those agencies already deal with.

Like other members of APEC, Mexico submits a report on terrorism which sets out all the measures undertaken by its Government to fulfil the ministers' and leaders' instructions in that field.

Maritime counter-terrorism measures are based on the policies of the International Maritime Organization (IMO); the Ministry of the Navy has communicated to all naval zones and sectors the contents of the International Ship and Port Facilities Security Code (ISPS Code), in accordance with article 2, paragraph XI, of the organic law on the Mexican Navy, whose provisions include the requirement to guarantee the rule of law in Mexican waters, either alone or in conjunction with the competent authorities and applicable legislation, in combating terrorism, smuggling, piracy on the seas, stealing of fishing vessels, fishing gear or fishery products, and illicit trafficking in persons, arms, narcotics and psychotropic substances.

The ISPS Code, and the amendments to the International Convention for the Safety of Life at Sea (SOLAS) which created chapter XI-2 thereof, were a product of the international concern associated with the terrorist attacks of 11 September 2001 in the United States of America. Accordingly, in order to fulfil its international commitments to the security of its own territory and the hemisphere, and to address the issue concerned, Mexico has signed, ratified and abided by various international legal instruments to counter this globalized scourge.

In order to translate into action the special measures to enhance maritime security, the Ministry of the Navy and the Ministry of Communications and Transport have agreed to strengthen protection, security and order at ports by establishing a framework of cooperation to guarantee the protection established in the ISPS Code.

In January 2004, the ICAO audit section inspected two major international airports in Mexico (Mexico City and Guadalajara) for compliance with the Standards and Recommended Practices of annex 17 for the protection of civil aviation against acts of illicit interference; the auditors determined that security was above the international average. The observations of the audit are being addressed, and an ICAO follow-up visit is scheduled for 29 May to 2 June 2006.

1.9 Would Mexico please specify, without compromising any sensitive information, how it employs, in its fight against terrorism, special investigation techniques such as:

- **Undercover operations;**

Infiltration of agents is authorized in Mexico by the Attorney-General.

Such operations must be part of an investigation into organized crime; this would include terrorism, pursuant to the update to the Federal Organized Crime Act, article 11 of which specifies:

> "Article 11. — In preliminary inquiries into the crimes to which this Act refers, investigation must also extend to knowledge of organizations' structures, methods of operation and areas of action. To that end, the Attorney-General may authorize infiltration of agents.
>
> In such cases, investigation must include not only natural persons belonging to the organization, but also legal persons on which the organization relies for its criminal activities."

- **Tracking the funds of terrorist groups;**

Tracking of the funds of natural or legal persons connected with a crime categorized by the law as organized crime takes place through the National Banking and Securities Commission and the Financial Intelligence Unit.

When tracking of the funds of terrorist groups, the Public Prosecutor's Office may obtain the evidence needed for its investigations by any legal means. Furthermore, article 180 of the Federal Code of Criminal Procedure provides that it is empowered to request information regarding the financial system:

> "Article 180. — In order to ascertain the *corpus delicti* and the probable responsibility of the suspect, the Public Prosecutor's Office and the courts shall have the widest latitude to employ whatever methods of investigation they deem relevant, even if those methods are not referred to in legislation, provided that they are not against the law.
>
> Requests for information or documents regarding the financial system emanating from the Attorney-General, from the public servant to whom that ability is delegated or, where appropriate, from the judicial authorities, shall be handled by the National Banking and Securities Commission, the National Insurance and Guarantees Commission and the National Commission for the Retirement Savings System, in their respective fields of responsibility. Requests for information or documents connected with taxation shall be handled by the unit of the Ministry of Finance and Public Credit determined by its head."

In addition, article 9 of the Federal Organized Crime Act provides that:

"Article 9. — ...

Requests from the Public Prosecutor's Office or the federal judicial authorities for information or documents regarding the financial system shall be handled by the National Banking and Securities Commission, the National Commission for the Retirement Savings System or the National Insurance and Guarantees Commission, as appropriate. Requests connected with taxation shall be handled by the Ministry of Finance and Public Credit."

- **Intercepting communications on the Internet and other forms of communication:**

Private communications may be intercepted with court authorization. Interception must be carried out only by, and under the authority of, the Public Prosecutor's Office, with the participation of a qualified expert. It will determine the communications to be listened to or intercepted, the locations to be placed under surveillance and the duration of the operation, which may be extended by the district judge at the request of the Public Prosecutor's Office. However, the total duration, including extensions, must not be longer than six months.

- **Breaking up terrorist networks.**

Breaking-up of terrorist networks is achieved by combining all the specialized investigation techniques.

Effectiveness of international cooperation in criminal matters

1.10 Pursuant to paragraph 2 (f) of resolution 1373 (2001), States should afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings. Could Mexico outline its principal domestic legal procedures for cooperation with other States on issues such as transfer of criminal proceedings, transfer of sentenced persons, letters rogatory and the recognition and validity of foreign criminal judgements?

The international cooperation efforts of the Government of Mexico to assist in obtaining evidence and fulfilling procedures in criminal cases, including letters rogatory, is based on two systems or channels for routing and receiving requests:

1. Requests made pursuant to a treaty, agreement or convention for mutual legal assistance

The aim of such agreements is to provide mutual assistance in preventing, investigating and prosecuting crimes, or in conducting any other criminal proceeding. They may be used to request documents, searches or freezing measures, testimony, voluntary transfer of persons in the other party's custody to enable them to testify, serving of documents, locating or identifying individuals, exchanging information, and so on.

The coordinating or central authority designated by the Government of Mexico in such agreements is the Office of the Attorney-General, which receives requests through its Deputy Attorney-General's Office for legal and international affairs.

The Government of Mexico has agreements for mutual legal assistance in criminal matters with the following:

1. Australia
2. Belgium
3. Brazil
4. Canada
5. Chile
6. Colombia
7. Cuba
8. El Salvador
9. France
10. Germany
11. Guatemala
12. Italy
13. Netherlands
14. Nicaragua
15. Panama
16. Peru
17. Portugal
18. Spain
19. United States of America
20. Venezuela

Moreover, it has signed the following multilateral conventions with provision for mutual legal assistance:

- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- The United Nations Convention against Transnational Organized Crime;
- The Inter-American Convention against Corruption;
- The Inter-American Convention on Mutual Assistance in Criminal Matters;
- The International Convention for the Suppression of the Financing of Terrorism;
- The Inter-American Convention against Terrorism.

2. Requests made in the absence of treaties, agreements or arrangements relating to international legal assistance

A request for legal assistance or an international letter rogatory should be submitted in writing, duly translated into Spanish, through the diplomatic channel, i.e., through the Ministry of Foreign Affairs.

The Ministry of Foreign Affairs, having received the request, shall analyse it in order to decide whether to transmit it to the Office of the Attorney-General or to the appropriate judicial authority.

The requesting country must indicate which authority is responsible for the investigation, institution of proceedings or trial, provide a summary of the facts, indicate the offences that gave rise to said investigation or trial, and give a detailed description of the assistance required.

Regarding the transfer of convicted persons, the Government of Mexico has signed agreements relating to the enforcement of foreign criminal judgements which aim to facilitate the social rehabilitation of convicted persons by allowing them to

serve their sentences in the country of which they are nationals. These agreements have been signed with Argentina, Canada, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Spain, the United States of America and Venezuela.

With respect to the recognition and validity of foreign criminal judgements, as already mentioned, the Government of Mexico has signed agreements relating to the enforcement of such judgements that provide for the transfer of convicted persons.

In addition, in connection with criminal judgements imposed on persons who are fugitives from justice, the Government of Mexico has signed more than 20 extradition agreements which, in recognition of such foreign judgements, provide for the detention and handover of fugitives in order to ensure that such persons serve the sentence imposed in the requesting country.

Effectiveness of customs, immigration and border controls

1.11 With respect to asylum-seekers, in the first report (p. 13), Mexico states that, under article 126 of the Population Act, any person who attempts to undermine Mexico's sovereignty or national security shall be permanently expelled from the national territory. What criteria are used in defining "national security" and how is this term interpreted by the Mexican courts? Are any of the offences mentioned in paragraph 2 (c) of resolution 1373 (2001) and in the 13 international instruments on the suppression of terrorism considered to constitute offences against national security? Can a person involved in terrorism activity that has no connection to Mexico be admitted to the country? Would such a person be denied refugee status?

The main national security objectives under the National Development Plan 2001-2006 are to ensure the protection of collective interests, preventing as far as possible or minimizing any risk or threat to the physical integrity of the population and institutions.

In Mexico, all of the offences set out in paragraph 2 (c) of resolution 1373 (2001) and in the 13 international instruments on the suppression of terrorism are regarded as offences against national security.

As for the criteria that are used in defining "national security", article 3, paragraphs I and II, and article 5, paragraphs I and X, of the National Security Act state explicitly that:

> "**Article 3.** For the purposes of this Act, "national security" means actions aimed at immediately and directly protecting the integrity, stability and permanence of the State of Mexico, resulting in:
>
> I. The protection of the Mexican people against threats and dangers facing the nation;
>
> II. The protection of national sovereignty and independence and the defence of national territory.
>
> **Article 5.** For the purposes of this Act, the following are regarded as threats to national security:

I. Acts carried out for the purpose of committing espionage, sabotage, terrorism, rebellion, treason or genocide against the United Mexican States within its national territory (...);

X. Any act of financing of terrorist activities or organizations."

Mexico does not admit terrorists to its territory, and denies such persons refugee status.

Since the commission of a terrorist act would affect national security, States must deny safe haven to any person who finances, plans or commits a terrorist act, or who supports such acts or offers safe haven to those that commit them, even if the act is not committed in the country where the foreign national in question is seeking refuge, since allowing the entry of such a person would endanger national security.

In accordance with legislation on migration and article 35 of the Population Act, foreign nationals who are victims of political persecution or who flee from their country of origin under any of the circumstances provided for in article 42 (VI), which relates to persons whose lives, safety or freedom are endangered by widespread violence or internal conflict in their country of origin, are admitted provisionally by the immigration authorities until such time as the Ministry of the Interior takes a decision on each individual case, which it does as expeditiously as possible. Needless to say, persons who have engaged in terrorist activity are not permitted to enter the country.

A person involved in terrorist activity that has no connection to Mexico cannot be admitted to the country.

Persons seeking political asylum are not regarded as immigrants. Political asylum, governed by article 42 (V) of the Population Act and article 165 of its Regulations, is awarded to any foreign nationals who are entering the country to protect their freedom or life from political persecution in their country of origin, and is authorized for such period of time as the Ministry of the Interior deems appropriate, depending on the circumstances of each case. Any person who has been granted political asylum and who violates Mexican law loses his or her immigration status, without prejudice to the penalties that are incurred for such offences. The Ministry of the Interior may grant such a person the status it deems appropriate in order to enable that person to remain legally in Mexico. In that regard, article 126 of the Population Act and article 133 of its Regulations provide as follows:

"**Article 126.** In cases of attack on national sovereignty or national security, expulsion shall be final. In all other cases, the Ministry of the Interior shall determine the period during which the foreign national concerned may not re-enter the country. During that period, readmittance is possible only with the express permission of the Minister of the Interior or head of the relevant ministerial department.

Article 133. The Ministry of the Interior, in the exercise of its functions, shall ensure that the migration of nationals and foreign nationals serves the interests of Mexico's economic, social and cultural development. In so doing, it shall protect the country's security and sovereignty, in full compliance with the law and with full respect for the rights of migrants."

Regarding the granting of refugee status, the eligibility procedure followed by the Government of Mexico is in line with paragraphs 2 (c) and 3 (g) of Security Council resolution 1373 (2001) and applies article 1 of the Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, article 1 F (a), (b) and (c) of which provide as follows:

> "F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) He has been guilty of acts contrary to the purposes and principles of the United Nations."

1.12 Pursuant to paragraph 2 (c) and (g) of resolution 1373 (2001), States should ensure the enforcement of effective immigration, customs and border controls in order to prevent the movement of terrorists, the establishment of safe havens and the commission of terrorist acts. The Committee would be grateful to receive details regarding:

- **The extent of cooperation and coordination between the different Mexican agencies with border control responsibilities, including the modalities and tools used and examples of the results of any joint activity;**

Mexico has concluded cooperation agreements with its northern and southern neighbours to implement border control measures with a view to controlling migration flows and detecting possible infiltration of extremist groups that seek to use Mexican territory to reach the United States of America for terrorist purposes. One such measure is Plan Centinela ("Sentinel Plan"), which is under implementation throughout Mexico, and the High-level Border Security Group (GANSEF) plan, which is used to secure Mexico's southern borders.

The Ministry of the Interior, through the National Institute for Migration, works closely with federal, State and municipal security and law enforcement agencies to combat trafficking in persons and other offences, such as terrorism, in a coordinated manner.

In order to prevent and combat such offences, the National Institute for Migration heads a national network of subcommittees for migration control and verification, in whose work various security agencies representing the three branches of government participate. The subcommittees convene periodically to exchange intelligence and logistics information with a view to formulating plans for joint action.

The National Institute for Migration is also involved in the activities of inter-agency security checkpoints operated by the Ministry of Defence at strategic locations along federal highways.

On the southern border, Operation South Border is in its second phase of implementation in the Comitán de Domínguez area of Chiapas, and Operation

"Acero III" is under implementation in the Soconusco area, aimed at combating both trafficking in persons and transnational organized crime.

In addition, measures to monitor arrivals and departures at Mexico City International Airport and Mexico's other major airports, such as Tuxtla Gutiérrez, Tapachula, Cancún, Villahermosa, Monterrey, Ciudad Juárez, Hermosillo, Tijuana and Mexicali, have been strengthened.

Security systems for Mexico's rail network have been strengthened in coordination with rail companies to prevent the use of infrastructure for illicit trafficking in persons and goods.

Mexico has concluded visa waiver agreements with its main trading partners, notably the United States of America, Canada, the European Union and a number of Latin American countries, but requires nationals of other countries to hold a visa issued by a Mexican consulate. The National Institute for Migration has taken particular care in screening the travel documents of nationals of countries whose citizens rarely travel to Mexico as migrants or tourists.

At all ports of entry into Mexico, the National Institute for Migration exhaustively screens the documents of persons seeking to enter Mexican territory. In addition, a series of courses has been launched to train migration officials how to detect false documents.

The National Institute for Migration has the necessary capacity to decide whether to grant or deny entry to foreign nationals directly at border checkpoints, even if a foreign national has, for any reason, previously been granted permission to enter or has a Mexican consular stamp or visa in his or her documents. These controls provide the necessary means of preventing terrorist movement.

- **The monitoring strategies and methods used to protect shipments entering and exiting Mexican territory, using all modes of transport, from acts of terrorism, and steps taken or to be taken to implement the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Global Trade;**

The General Customs Administration of the Ministry of Finance and Public Credit has reaffirmed its commitment to combating terrorism — striving to protect human life, property and the environment and to ensure the security and facilitation of the international trade supply chain, as recommended by the World Customs Organization — by strengthening agreements and arrangements relating to cooperation and mutual assistance between the General Customs Administration and its counterparts in Belize, Canada, Costa Rica, Cuba, France, Guatemala, Israel, Nicaragua, the Russian Federation, Spain, the United States of America and, recently, the Republic of Korea. These instruments enable Mexico to exchange information on prohibited goods prior to their arrival on or departure from national territory.

In order to bolster those efforts, and with respect to passengers on international flights, article 7 of the Customs Act provides that airlines and sea and rail transportation companies that offer international passenger transportation must transmit information electronically on passengers, crew and vessels entering or leaving Mexico to the General Customs Administration, using the US/EDIFACT or

UN/EDIFACT standards. This enables the Mexican authorities in advance to obtain and pass on information regarding persons entering or leaving Mexican territory.

In 2004, the General Customs Administration, as part of its commitment to combating terrorism, launched a permanent training programme for front-line officials working for Mexico's 48 customs offices (now 49, following amendments to the internal rules of procedure of the Tax Administration Service, published in the *Official Gazette* of 12 May 2006 and scheduled to enter into force on 10 June 2006) on how to identify and detect materials containing radiation sources, dual-use chemical substances, biological products, explosives and arms with the aim of ensuring the security and facilitation of the international trade supply chain. To date, 285 customs officials have received such training through at least 25 training courses organized in collaboration with the International Atomic Energy Agency (IAEA), the Organisation for the Prohibition of Chemical Weapons (OPCW) and various Canadian and United States agencies.

With regard to air transport, according to the Ministry of Communications and Transport, the Airports Act (articles 71 to 73) and its Regulations establish the parameters for coordination among the authorities with respect to security matters, and also the obligation to establish a national airport security programme and a national airport security committee, which will operate under the Ministry of Communications and Transport with the participation of key national security agencies, namely, the Ministries of the Interior, Defence, Naval Affairs, Finance and Public Credit, the Environment and Natural Resources, the Civil Service, Health and Agriculture, Livestock, Rural Development, Fisheries and Food, the Office of the Attorney-General, the Mexican Air Traffic Control Service (SENEAM), the National Chamber of Air Transport (CANAERO), the Mexican Pilot Training School and airport franchises. They also establish the requirement that each airport should have a local security committee chaired by the airport director and consisting of the airport authorities, the airport administrator, a representative of SENEAM and an airline representative. Each committee is responsible for drawing up a local security programme.

The National Airport Security Programme (published in the *Official Gazette* of 15 June 1999) establishes the responsibilities of the relevant authorities, the modes of coordination and operation of the National Airport Security Committee, security controls for airports and aeroplanes and procedures for dealing with cases of illegal interference.

With regard to rail transport, a bilateral cooperation arrangement between Mexico and the United States of America has resulted in more thorough screening of units transporting dangerous waste and materials across Mexico's northern border, in conformity with the legislation of both countries, without detriment to the efficiency of trade exchange at border crossing points. To that end, X-ray equipment has been installed at a number of border checkpoints to screen cargo entering or leaving Mexico.

In addition, Mexican and United States rail companies jointly conduct daily inspections of equipment used to screen imports and exports, with the assistance of their respective security staff, thus preventing interference by persons who have no connection with railway operations.

As regards automotive transport, since 23 September 2005, Mexico has been working with the Transportation Security Administration (TSA) of the United States Department of Homeland Security (DHS) to establish an arrangement whereby drivers of vehicles transporting dangerous materials from Mexico and Canada undergo a security assessment conducted by TSA. The purpose of the assessment is to verify, on the basis of personal documents and other information provided by intelligence agencies, that dangerous goods drivers operating in the United States of America do not have links to terrorist organizations.

In order to carry out the assessments, the TSA has proposed that it be made compulsory to include Mexican dangerous goods drivers under the United States Customs and Border Protection Free and Secure Trade Program (FAST), which is currently implemented jointly with the United States Government. The Program is the result of a bilateral initiative between Mexico and the United States of America, and establishes stricter controls for dangerous goods drivers (digital fingerprinting and digital photographs of such drivers and verification of their identification and nationality documents).

The FAST Program is currently voluntary for Mexican dangerous goods drivers, but consideration is being given to the possibility of making it compulsory.

As regards shipping, the International Code for the Security of Ships and Port Facilities (ISPS Code) is in place at all Mexican ports, with the primary objective of preventing the commission of terrorist acts that affect persons, cargo, shipments and installations.

The ISPS Code was published in the *Official Gazette* of 11 February 2004, becoming law in accordance with article 133 of the Constitution of the United Mexican States.

One of the measures to protect export vessels against terrorist acts is to place cargo and containers that have already passed through customs in a sterile zone to which only authorized staff have access, since those zones are classified as restricted.

X-ray screening equipment is installed at customs exits in the ports of Veracruz, Altamira, Manzanillo and Lázaro Cárdenas, helping to detect cargo that has not been declared on the import licence.

To date, no cargo has been detected that could be used as a weapon of mass destruction.

However, following the entry into force of the United States Bioterrorism Act (12 December 2003), the Ministry of Communications and Transport has assisted in guiding the application of and promulgating the Act with a view to ensuring that Mexican carriers comply with its provisions.

Lastly, in coordination with the General Customs Administration of the Ministry of Finance and Public Credit, an information poster on how to identify the risks of dangerous substances has been designed and distributed for dissemination at all Mexican customs points.

- **The mechanisms and safeguards in place to detect and prevent the movement of terrorists across State borders at crossings where there is no official monitoring.**

Mexico has implemented the above-mentioned Plan Centinela, the objective of which is to detect, prevent and discourage illegal activities throughout national territory, particularly in strategic areas and at strategic points that are likely targets for attack by terrorist groups.

Integrated System for Immigration Operations (SIOM)

Established in July 2004, the Integrated System for Immigration Operations (SIOM) is designed to extend and update the processing of migration records using electronic systems, and covers all states within Mexico.

SIOM envisages five strategic action lines: (i) availability of online information regarding immigration procedures in order to facilitate the timely adoption of appropriate decisions; (ii) improved response times for decisions; (iii) limitation of the discretionary powers of the authorities; (iv) monitoring, in real time, of the performance of the various offices of the National Institute for Migration; and (v) availability of the necessary means of conducting audits.

The system operates on the basis of 11 modules: (1) migration flows; (2) secondary screening; (3) migration control; (4) shipping; (5) repatriation; (6) complaints; (7) insurance policyholders; (8) electronic FM1 (migrant registration) forms; (9) migration archive; (10) procedures; and (11) rights of migrants.

It should be noted that the migration control module manages and updates a list of persons with terrorist links or who have been prosecuted or convicted for criminal or other offences, political asylum-seekers and migrants, all of whom are registered in the Migration Alert System.

At present, more than 70,000 persons are registered in the system, of whom 347 are also included on the Consolidated List of individuals and entities belonging to or associated with Osama bin Laden, Al-Qaida and the Taliban, which is maintained and periodically updated by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities.

Proposal for a comprehensive migration policy for Mexico's southern border

One of the strategic action lines set out in the proposal for a comprehensive migration policy for Mexico's southern border, which was submitted in October 2005 by the National Institute for Migration, relates to security on that border.

In that regard, Draft Act No. 3.3.1, on the creation of an inter-ministerial border security committee to combat illicit activities involving foreign nationals, provides for a course of action aimed at strengthening migration controls along those routes most frequently used by persons entering the country illegally and at extending mechanisms for the investigation of cases of illegal migration, in coordination with other institutions and with the aim of detecting trafficking in migrants and other illicit activities involving foreign nationals.

In applying immigration, customs and border controls, the Government of Mexico respects the human rights and fundamental freedoms of all persons in accordance with international law, particularly international human rights law,

international refugee law and international humanitarian law, even if a person is a suspected terrorist.

Articles 11, 12 and 13 of the Population Act provide as follows:

"**Article 11.** The international transit of persons through ports and airports and across borders shall be permitted only at the locations and times designated for that purpose and shall be monitored by the migration authorities.

Article 12. The Ministry of the Interior may temporarily close airports, seaports and borders to international transit to protect the public interest.

Article 13. Nationals of the United Mexican States and foreign nationals wishing to enter or leave the country must fulfil the requirements stipulated in this Act and its Regulations and other applicable provisions."

It should also be noted that Mexico and the United States of America have established a joint plan of action to improve border security.

Mexico is convinced that the only way to eradicate terrorism is through a common approach applied rigorously by States in conformity with the purposes and principles set forth in the Charter of the United Nations and international law, including humanitarian law and respect for human rights, given that one of the purposes of the United Nations is "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

1.13 Does Mexico permit legal name changes without prior residency? If so, is some form of positive identification performed, such as finger printing or photographing applicants in their old identities?

For Mexican nationals, civil laws provide procedures for name corrections and changes, which must be carried out before a civil judge. Name changes without prior residency are not permitted.

Firearms

1.14 In its second report (p. 11), Mexico mentions that an application for the sale of firearms or explosives must be granted if the legal requirements have been met. The Committee would like to know what these legal requirements are and in which circumstances a licence can be refused or revoked.

Article 46 of the regulations pertaining to the Federal Firearms and Explosives Act requires the following for the sale of firearms:

- Certified copy of the applicant's birth certificate from the civil registry. Foreign nationals must present documentation justifying their legal status in the country.

  Approval by the Governor of the state or territory where the person plans to carry out the transaction, or, where appropriate, the head of government in the Federal District.

– A certificate of security issued by the first administrative authority where the person intends to carry out the transaction, and detailed plans ensuring that the facilities, warehouses and magazines will be adequate to protect people and things from harm or damage, and indicating measures to prevent accidents and theft.

– A certified copy of the incorporation papers if it is a commercial corporation.

When permit requests are made by a person holding power of attorney, the person must certify his or her identity by notary public and state at the foot of the application that his or her signature is the one that will be used to sign any documents sent to the Ministry.

In addition to the above-mentioned requirements, the following must be submitted by anyone wishing to sell explosives:

– A comprehensive map including a 1,000-metre radius of the area where warehouses and magazines are to be established, to 1:4,000 scale, including, if applicable, military installations, roads, electrical, telephone and telegraph lines, aqueducts, oil pipelines, gas pipelines, houses, bridges and tunnels, archaeological or historical zones or industrial installations and elements of topography.

– Detailed plans for the construction and siting of the aforementioned facilities, to scale.

– A list of the types of explosives the person intends to sell.

Article 50 of the Regulations pertaining to the Federal Firearms and Explosives Act stipulates that in order to sell firearms to individuals, authorized merchants must fulfil the following requirements:

I. Fully identify the buyer;

II. Require the buyer to complete the disclosure form issued by the Ministry of Defence and provided for by article 13 of the Regulations, including the buyer's first name, paternal and maternal last names, date of birth, gender, whether he or she is literate, profession, trade or occupation, nationality, place of residence and private domicile, the weapon's characteristics and other information;

III. Verify the accuracy of the buyer's general information and carefully ensure that he or she gives clear fingerprints;

IV. Set out the details of the transaction;

V. Give the buyer a copy of the disclosure form after the sale has been closed. This copy protects the right to transport the weapon acquired to the buyer's home; and

VI. Submit the disclosure form to the Ministry of Defence within 24 working hours after the transaction.

In accordance with article 43 of the Federal Firearms and Explosives Act, the request for a licence or permit may be denied if the petitioner does not meet the legal requirements or has been convicted of an offence committed with firearms or explosives. The permit may be revoked or suspended when the activities described

in it might endanger the security of persons and facilities or disturb public peace or law and order.

1.15 Please describe the measures in place to detect and prevent the illicit cross-border movement of weapons, munitions and explosives.

Mexico is party to conventions on information exchange which help to attain the results outlined in this item.

In addition, the General Customs Administration has 186 gamma ray and X-ray machines to inspect and detect containers, vehicles and luggage that may be used to transport contraband goods, including firearms. Should contraband be found, the personnel of the Ministry of Defence and the Public Prosecutor's Office, which prosecutes this offence, must be so notified.

Among the measures adopted to detect and prevent illicit cross-border movement of arms, ammunition and explosives, it is important to note that on 23 March 2005 the presidents of the United States of America and Mexico and the Prime Minister of Canada signed the Security and Prosperity Partnership of North America (SPP) in Waco, Texas, thereby forging a new relationship among the three countries. Goal six of SPP defines the security mechanisms to be established.

Aviation security

1.16 The International Civil Aviation Organization (ICAO) has recently initiated a Universal Security Audit Programme to audit all contracting States' compliance with annex 17 of the International Convention on Civil Aviation. Has Mexico encountered any difficulties in implementing annex 17? If so, please explain the types of difficulties and the standards concerned.

In general, Mexico has not encountered major difficulties in implementing annex 17 of the International Convention on Civil Aviation. However, it has faced relatively minor problems that it has been progressively resolving, such as those relating to quantitative and qualitative inadequacies in the organizational structure of the Directorate of Civil Aviation of the Ministry of Communications and Transport, an insufficient budget and the need for a national legal basis for reinforcing safety and security standards, in order to be fully capable of administering and monitoring the implementation of the standards and methods recommended in annex 17.

1.17 The Committee was pleased to learn that a committee on basic security standards is now drafting Mexico's official standards for certain aspects of aviation security. The Committee would appreciate an update on the work of this committee and, in particular, on the status of the drafting, legislation and implementation of official standards in the following areas:

- **Establishment of local airport security committees;**
- **Standards for airport security programmes; and**
- **Inspection procedures for registered luggage.**

The National Consultative Committee on Air Transport Standards is continuing to work on the drafting of Mexico's official standards and other regulations as

regards civil aviation security. The regulations listed below are finished and in process of publication; in fact, some of them are already being implemented as part of agreements between the Government and the aeronautical industry in the following areas:

- Formation and operation of the local airport security committees;
- Minimum content of the airport and airline security programmes;
- Control of access to restricted and sterile areas in airports through identification of persons and vehicles;
- 100 per cent inspection of registered baggage on national and international flights starting from 1 July 2006.

Implementation of the 13 international instruments on the suppression of terrorism

1.18 The Committee notes that Mexico has a system for the automatic incorporation of international treaties to which it is a party into domestic law without the need for enabling legislation (fourth report, p. 10). The Committee would therefore be grateful if Mexico could clarify the following points:

- **Are State institutions, including the courts, bound to apply the provisions of international instruments even if domestic legislation has not been adopted to that effect? Could Mexico clarify how its courts deal with those cases in which domestic legislation has to be adopted in order to give effect to the provisions of international instruments?**

  Article 133 of the Constitution of the United Mexican States states that:

  > "This Constitution, the laws of the Congress of the Union that emanate from it and all the treaties that are in accordance with it, concluded and to be concluded by the President of the Republic, with the approval of the Senate, shall be the supreme law of the whole Union. The judges of each state shall conform to this Constitution and these laws and treaties regardless of any provisions to the contrary that may exist in the constitutions or laws of those states."

In accordance with this article, the international treaties that Mexico has signed and ratified are part of the supreme law of the Union and, therefore, all authorities, including judges, should be guided in their actions by the provisions thereof. On the basis of this article it is understood that State institutions, including the courts, are indeed obliged to apply the provisions of international instruments.

Furthermore, article 4, second paragraph, of the Act on the Conclusion of Treaties, published on 2 January 1992 in the *Official Gazette*, states that "in order for international treaties and conventions adopted by Mexico to become binding throughout the national territory they must be published in the *Official Gazette*".

It therefore follows that the courts and their judges are obliged to observe the provisions contained in international instruments provided that they have been published in the *Official Gazette*, and Mexican law does not require that a national act be promulgated in order for such instruments to go into effect.

In Mexico, national institutions are automatically governed by international treaties that are not in contradiction with the Constitution of the United Mexican States and that have been ratified by the Senate, including where a particular provision is not contained in domestic legislation.

It is true that article 133 of the Constitution of the United Mexican States does not embody any individual guarantee, but rather establishes the principles of constitutional supremacy and the hierarchy of law-making. In consequence, the Constitution and the laws that emanate from it, as well as the treaties concluded with foreign powers by the President of the Republic with the approval of the Senate, are the supreme law. However, many of these treaties, in particular those that relate to the prohibition of and penalties for certain forms of conduct, are not automatically applicable, in that they entail an obligation to pass legislation. This type of treaty requires a process of harmonization with domestic law that is carried out in line with the principles involved.

- **The Committee notes that some articles of the international counter-terrorism instruments to which Mexico is already a party are not self-executing. How do the national courts implement those non-self-executing articles, particularly those aimed at prohibiting the financing, planning, facilitating and commission of terrorist acts and those which address obligations which States must incorporate into their domestic legislation?**

Some of the articles of the international counter-terrorism instruments to which Mexico is a party are not self-executing. The initiative being undertaken to reform Mexican criminal law, as described in the response to question 1.1 of this document, seeks to incorporate into our domestic legislation the international commitments relating to prohibiting the financing, planning, facilitating and commission of terrorist acts.

1.19 The Committee would appreciate information on the steps taken or to be taken by Mexico to become a party to the International Convention for the Suppression of Acts of Nuclear Terrorism.

Mexico signed the International Convention for the Suppression of Acts of Nuclear Terrorism on 12 January 2006, and the procedures stipulated by domestic law are currently being implemented so that the instrument may ultimately be ratified.

2. Implementation of resolution 1624 (2005)

Paragraph 1

2.1 What measures does Mexico have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Article 142 of the Federal Penal Code, which is applicable to article 139 of the same penal regulation relating to terrorism, states that:

> "Article 142. — Any person who instigates, incites or calls for the commission of the offences dealt with in this Title shall be subject to the same penalty as is specified for the offence in question, with the exception of the offences

referred to in the second paragraph of article 130, the second paragraph of article 131 and paragraph 1 of article 135, which shall retain their own specific penalty.

Any person who instigates, incites or calls on military personnel to commit the offences dealt with under this Title shall be liable to a penalty of 2 to 40 years' imprisonment."

As part of the Government's efforts to combat the activities of international terrorist groups, on 11 September 2003 the President of the Republic submitted to the Senate of the Republic an initiative to criminalize international terrorism and the financing of terrorism. The Senate approved the initiative on 27 October 2005 and transmitted it to the Chamber of Deputies for adoption. The bill is currently being considered by two committees of that chamber and is expected to be adopted shortly.

The above-mentioned bill modifies articles 139 and 148 bis of the Federal Penal Code, by criminalizing international terrorism and the financing of terrorism.

With the reform of article 139, not only will terrorist acts carried out in Mexico be penalized, but also such acts as are carried out in Mexico with the intention of undermining the international security or authority of a foreign State.

Also, article 148 bis penalizes the raising of funds of any type that are intended to support terrorist activities or assist them in any way, regardless of the ultimate purpose assigned to such funds.

The most important measure at the present time is the Plan Centinela ("Sentry Plan") that Mexico put into operation on 7 July 2005. The Federal Government initiated Plan Centinela to prevent any terrorist act that could be unleashed from Mexican territory, following the attacks that took place on that date in London.

Under this Plan, special attention is being paid to embassies and diplomatic representations, particularly those of countries involved in the fight against terrorism. The Plan is in line with the orange alert announced in the United States of America. An ongoing operation will be maintained for the detection, blocking and breaking up of organizations trafficking in persons, particularly those specializing in restricted nationalities. The surveillance of strategic facilities has also been intensified, including the infrastructure of the oil and hydroelectric industries, telecommunications and transport, as well as ports and airports. All the Mexican people's constitutional guarantees will be preserved and protected. The Federal Government is making an additional effort of surveillance, care and prevention, under Plan Centinela, in line with prudence and the agreements taken on by the National Security Council.

2.2 What measures does Mexico take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

Mexico always respects the human rights of all persons. Therefore, even where there is credible and relevant information, due process must first be applied, taking into consideration the principle of innocence until guilt is proven.

The Population Act provides discretionary power to deny entry to dangerous persons, including terrorists, and therefore they are not permitted to enter the country.

In accordance with article 106 of the Regulations pertaining to the Population Act, the National Institute for Migration has set up a Migration Alert System that includes the periodic updating of the list of foreigners involved in terrorist activities, as part of the Integrated System for Immigration Operations (SIOM), in order to deny their entry into the country. As of 7 February 2006, 357 migration alerts have been recorded in SIOM.

If there is credible information that a foreigner has been guilty of inciting or committing acts of terrorism, he or she may be refused protection, under article 126 of the Population Act for undermining Mexico's sovereignty or national security, in which case he or she would be permanently expelled.

Article 37, paragraph V, of the Population Act also provides that admission can be refused to foreigners if they have breached national law or have an unsavoury history abroad.

Paragraph 2

2.3 How does Mexico cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

Mexico cooperates through agreements such as the United States of America-Mexico Smart Border Partnership, signed in March 2002 by Mexico's Minister of the Interior and the Secretary of State of the United States of America within the framework of bilateral cooperation in order to develop and implement mechanisms for the detection and interception of persons who may be connected to terrorist groups.

The agreement provides for the implementation of systems at diverse entry points into both countries to facilitate the movement of low-risk travellers and cooperation in identifying potentially dangerous persons before their arrival in North America. It also includes the establishment of a bilateral exchange mechanism called Advanced Passenger Information System (APIS), which has been incorporated into the operations of the migration alert models of the Integrated System for Immigration Operations.

The Mexico-Guatemala High-level Border Security Group (GANSEF) was formalized in October 2002 to strengthen preventive measures and law enforcement on the common border. Five subgroups were established to deal with: (i) migration, human rights and border issues, (ii) security and international terrorism, (iii) organized crime and judicial cooperation, (iv) public safety and (v) customs.

Agencies of both countries have attended high-level inter-ministerial, binational technical meetings to design strategies to reduce risks on the common border. Principal efforts include information exchange and enhanced screening and infrastructure at border crossings.

In March 2003 the Governments of Mexico and Guatemala defined a binational plan of action for each subgroup. The first subgroup, on migration and human rights, is coordinated by the National Institute for Migration and focuses, among other things, on enhancing screening and infrastructure at border crossings, and on training migration employees to deal with human rights issues and identify travel documents.

At the fourth GANSEF high-level meeting, held in Mexico City on 27 February 2006, the subgroup on migration, human rights and border issues agreed to carry out, among other activities, the 2006 workplan, which includes establishing mechanisms for bilateral cooperation on border security (migration alerts) in order to combat the smuggling of migrants, trafficking in persons, document forgery and the entry of potentially high-risk persons.

A Mexico-Belize Memorandum of Understanding on Border Security and Cooperation was signed by Mexico's Minister of the Interior and the Minister of Home Affairs and Public Utilities of Belize on 28 June 2005 during the official visit of the President of Mexico to Belize. The goal of the memorandum is to establish the Mexico-Belize High-level Border Security Group (GANSEF) to institutionalize cooperation and bilateral mechanisms for border security.

With a view to broadening security coverage on the southern border of Mexico, an agreement to reproduce the model established in Guatemala was reached with the authorities of Belize. Officials from the three Governments established the foundations for future work on a trilateral project to enhance efforts made to date.

On 27 February 2006 the installation meeting of the High-level Border Security Group was held in Mexico City, chaired by the Mexican Minister of the Interior and the Minister of Home Affairs and Public Utilities of Belize. GANSEF working groups were established, as were four subgroups responsible for attaining agreed goals in the following areas: (i) migration, security and international terrorism, (ii) public safety, (iii) customs and (iv) narcotrafficking and organized crime. The National Institute for Migration was charged with designing the action plan for the subgroup on migration.

A special section of the Security and Prosperity Partnership of North America (SPP) on aviation security provides that each country will develop a passenger evaluation programme to restrict air transportation or apply additional security measures (such as identification verification, more meticulous carry-on and checked luggage inspections and strict cross-checking of luggage with passengers as they board the aircraft). These security measures are applied to international and domestic flights and seek to ensure that persons who are a threat to civil aviation will be denied access to aircraft or subjected to strict screening, depending on their specific histories.

To that end, Mexico, Canada and the United States of America will cooperate in the development of passenger assessment tools, risk criteria and similar procedures for inspections and screening.

In regard to overflights, Mexico, Canada and the United States of America will work together to identify mechanisms to promote safe and efficient aviation in accordance with the legislation of each country.

Furthermore, Mexican aeronautic officials participate in international forums such as the International Civil Aviation Organization (ICAO), the Caribbean and South American Regional Planning and Implementation Group (GREPECAS), the Latin American Commission on Civil Aviation (CLAC) and the Asia-Pacific Economic Cooperation Forum (APEC), and they heed security recommendations and agreements.

Furthermore, in the framework of SPP, information exchange will be enhanced by increasing maritime operation coordination, developing and implementing plans to improve regional operations to protect our coasts and contiguous waters and respond to maritime threats, including the evaluation of appropriate mechanisms and legal frameworks to facilitate maritime intelligence cooperation and exchange reports on commercial vessels in real time, at the appropriate levels and with special emphasis on terrorism and criminal activity (dual binational). The foregoing is scheduled to conclude in January 2007.

Paragraph 3

2.4 What international efforts is Mexico participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Since 1998, at the initiative of the Islamic Republic of Iran, the United Nations General Assembly has included Dialogue among Civilizations on its agenda. During the fifty-sixth session of the General Assembly in 2001, resolution 56/6 on the Global Agenda for Dialogue among Civilizations was adopted without a vote and established the principles and objectives of the Dialogue and formulated a Programme of Action.

The Global Agenda states that the Dialogue is a process between and within civilizations, founded on inclusion and a collective desire to, inter alia, integrate multiple perspectives through dialogue. It emphasizes the following as principal objectives: promotion of inclusion, equity, equality, justice and tolerance in human interactions; enhancement of mutual understanding and respect through interaction among civilizations; and enhancement of respect for cultural diversity and cultural heritage.

The Programme of Action invites States, the United Nations system and other international and regional organizations and civil society to promote dialogue in all domains, through interaction and exchange among all individuals, including intellectuals, thinkers and artists, mutual visits and meetings of experts in various fields from different civilizations, cultures and backgrounds, exchange of visits among representatives of the arts and culture, sponsorship of sports competitions, conferences, symposiums and workshops, promotion of historical and cultural tourism and utilizing the existence of migrants in various societies in bridging the gap of understanding between cultures.

Within the framework of the work of the United Nations General Assembly, Mexico has joined in sponsoring the majority of General Assembly resolutions on the Dialogue among Civilizations. Likewise, Mexico views with interest the Alliance of Civilizations, initiated by Spain and Turkey, aimed at achieving a détente between Islamic and Western societies.

2.5 What steps is Mexico taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

Mexico is party to all international conventions against terrorism, the application of which counters the incitement of terrorist acts in the country.

Paragraph 4

2.6 What is Mexico doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all its obligations under international law, in particular international human rights law, refugee law and humanitarian law?

Prior to signing international treaties on terrorism, Mexico had laws on human rights and refugees, which continue to be applicable independently of the fact that, according to the provisions of article 133 of the Constitution of the United Mexican States, the treaties are part of Mexican legislation.

Mexican law does not provide for specific procedures for the incorporation of obligations imposed by the Security Council. They are applied directly to national authorities in accordance with Article 25 of the Charter of the United Nations, and when their application affects individuals, the obligations are automatically incorporated into Mexican law when they are published in the *Official Gazette*.

However, Mexico has noted that the obligations under paragraphs 1, 2 and 3 of Security Council resolution 1624 (2005) do not conflict with any of the obligations established in the framework treaties on refugee law, international humanitarian law and human rights law. Therefore, Mexico, as party to the Geneva Convention of 1949 and the Protocol Additional to the Geneva Convention adopted in 1977, does not have a conflict of obligations with respect to the international law in force in Mexico or the provisions contained in resolution 1624 (2005).

Furthermore, protection of and respect for human rights is guaranteed under the provisions of our Constitution in the section on individual guarantees and under those international instruments to which Mexico is party.

3. Assistance and guidance

3.1 The Committee notes with appreciation that the Government of Mexico has offered to provide assistance to other States in connection with implementation of resolution 1373 (2001) and would appreciate receiving any updates to the information posted on the Directory of Assistance. The Committee encourages Mexico to inform it of any assistance that it is currently providing, or might be in a position to provide, to other States in connection with implementation of this resolution.

The Directorate of Civil Aviation of the Ministry of Communications and Transport offers assistance to other States through:

– Instruction on civil aviation security based on the International Civil Aviation Organization (ICAO) Aviation Security Training Package (ASTP);

- Assistance in standardizing measures and procedures for security in civil aviation;

- Establishment of quality controls on security measures in place.

The Financial Intelligence Unit of the Ministry of Finance and Public Credit is able to share with other authorities its experience in the design and implementation of the general model for preventing and combating money-laundering and the financing of terrorism in Mexico.

The Customs Administration of the Ministry of Finance and Public Credit is planning a Latin American and Caribbean regional seminar on customs security and controls on exports of radioactive materials and dual-use chemical precursors, to be held in Mexico in 2006.

The objective of the seminar is to train employees of customs administrations in Latin America and the Caribbean on issues of customs harmonization, operations and security, based on guidelines recommended by the World Customs Organization for the international control of exports, in an effort to guarantee control, security and the facilitation of the international trade supply chain within the framework of the provisions of United Nations Security Council resolutions 1373 (2001), 1540 (2004) and 1673 (2006).

The General Customs Administration is also making efforts, at national level and through international organizations and the government agencies of our trade partners, to obtain the donation of equipment to detect nuclear, chemical and biological materials, weapons and other potentially lethal goods, as well as personal protection equipment; this is an area of grave concern, as has been recognized in the resolution itself. Therefore, we reiterate to the Committee our need to participate in the various equipment and training programmes, the objective of which is to enable our front-line personnel in the 49 customs facilities in Mexico to identify and detect the illicit trafficking of the goods referred to above.

3.2 The Committee wishes to emphasize once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of the resolutions. Its Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee takes note of the technical assistance requested in the previous reports and is pleased to inform Mexico that its requested assistance has been brought to the attention of potential technical assistance providers through the Committee's assistance Matrix.

The Financial Intelligence Unit of the Ministry of Finance and Public Credit would welcome assistance in techniques for the detection of operations linked specifically to the financing of terrorism as well as trends in regulations in order to prevent the use of non-financial activities by criminal organizations.

The Attorney-General's Office would welcome technical assistance in control over the use of the two complementary communication tools most often used by criminals: the Internet and cellular telephones.

It is not useful to install filters to restrict access to specific sites, since many Internet users can circumvent the filters. If one has the skill and the technical means by which to connect to it, most of the content of the Internet is available from

anywhere in the world. Thus it is one of the most vulnerable security points. Internet and cellular phone use could be controlled by enabling the State to set standards to authorize access to and responsible use of such media after full identification of the user. User identity could be verified with the aid of technology by assigning a control number that could even be tracked when necessary, to physically locate the person and verify Internet and cellular phone use. This would inhibit their use for criminal acts by eliminating the anonymity that protects illicit activities, including terrorism, currently enjoyed by Internet and cellular phone users.

3.3 Furthermore, in light of the specific areas related to Mexico's implementation of resolution 1373 (2001) outlined in Section 1 of this letter, and based on Mexico's reports to the Committee and on other relevant information available, the Committee, with assistance from the CTED experts, has conducted a preliminary analysis of Mexico's technical assistance needs in order to identify priority areas in which the Committee believes Mexico may benefit from receiving technical assistance. With the agreement of and in cooperation with the Government of Mexico, the aim is to identify the best possible way for Mexico to benefit from technical assistance in order to strengthen its implementation of the provisions of this resolution.

Mexico is prepared to accept Committee technical assistance and cooperation programmes that will be useful to the plans being implemented in the country and discussed in point 2.1, penultimate paragraph, of Mexico's fourth report to the Committee, submitted on 18 August 2004 (S/2004/983).

The Directorate of Civil Aviation of the Ministry of Communications and Transport would appreciate the Committee's consideration of Mexico's needs for technical assistance with respect to controls over access to airports and other installations related to civil aviation, the security of air cargo and international coordination to respond to acts of illicit interference with civil aviation.

3.4 The analysis identified, on a preliminary basis, the following potential areas of assistance needs, with the understanding that further assessments may be necessary. The points below represent *selected* areas, among the areas referred to in the resolution, where assistance might be particularly useful:

- Drafting criminal legislation;
- Training administrative and law enforcement authorities and the public sector to prevent and detect money-laundering and financing of terrorism;
- Training Financial Intelligence Unit (FIU) staff to fulfil their functions; and adopting regulations on the reporting obligations of professional intermediaries.

The Financial Intelligence Unit has indicated that it would welcome assistance in techniques for the detection of operations linked specifically to the financing of terrorism as well as trends in regulations in order to prevent the use of non-financial activities by criminal organizations.